

Calendar No. 186

108TH CONGRESS
1ST SESSION

S. 11

To protect patients' access to quality and affordable health care by reducing the effects of excessive liability costs.

IN THE SENATE OF THE UNITED STATES

JUNE 27 (legislative day, JUNE 26), 2003

Mr. ENSIGN (for himself, Mr. FRIST, Mr. McCONNELL, Mr. KYL, Mr. BUNNING, Mr. ENZI, Mr. THOMAS, Mr. VOINOVICH, Mr. HAGEL, Mr. CORNYN, and Mr. INHOFE) introduced the following bill; which was read the first time

JUNE 27, 2003

Read the second time and placed on the calendar

A BILL

To protect patients' access to quality and affordable health care by reducing the effects of excessive liability costs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Patients First Act of
5 2003”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—

3 (1) EFFECT ON HEALTH CARE ACCESS AND
4 COSTS.—Congress finds that our current civil justice
5 system is adversely affecting patient access to health
6 care services, better patient care, and cost-efficient
7 health care, in that the health care liability system
8 is a costly and ineffective mechanism for resolving
9 claims of health care liability and compensating in-
10 jured patients, and is a deterrent to the sharing of
11 information among health care professionals which
12 impedes efforts to improve patient safety and quality
13 of care.

14 (2) EFFECT ON INTERSTATE COMMERCE.—
15 Congress finds that the health care and insurance
16 industries are industries affecting interstate com-
17 merce and the health care liability litigation systems
18 existing throughout the United States are activities
19 that affect interstate commerce by contributing to
20 the high costs of health care and premiums for
21 health care liability insurance purchased by health
22 care system providers.

23 (3) EFFECT ON FEDERAL SPENDING.—Con-
24 gress finds that the health care liability litigation
25 systems existing throughout the United States have

1 a significant effect on the amount, distribution, and
2 use of Federal funds because of—

3 (A) the large number of individuals who
4 receive health care benefits under programs op-
5 erated or financed by the Federal Government;

6 (B) the large number of individuals who
7 benefit because of the exclusion from Federal
8 taxes of the amounts spent to provide them
9 with health insurance benefits; and

10 (C) the large number of health care pro-
11 viders who provide items or services for which
12 the Federal Government makes payments.

13 (b) PURPOSE.—It is the purpose of this Act to imple-
14 ment reasonable, comprehensive, and effective health care
15 liability reforms designed to—

16 (1) improve the availability of health care serv-
17 ices in cases in which health care liability actions
18 have been shown to be a factor in the decreased
19 availability of services;

20 (2) reduce the incidence of “defensive medi-
21 cine” and lower the cost of health care liability in-
22 surance, all of which contribute to the escalation of
23 health care costs;

24 (3) ensure that persons with meritorious health
25 care injury claims receive fair and adequate com-

1 pensation, including reasonable noneconomic dam-
 2 ages;

3 (4) improve the fairness and cost-effectiveness
 4 of our current health care liability system to resolve
 5 disputes over, and provide compensation for, health
 6 care liability by reducing uncertainty in the amount
 7 of compensation provided to injured individuals;

8 (5) provide an increased sharing of information
 9 in the health care system which will reduce unin-
 10 tended injury and improve patient care.

11 **SEC. 3. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

12 The time for the commencement of a health care law-
 13 suit shall be 3 years after the date of manifestation of
 14 injury or 1 year after the claimant discovers, or through
 15 the use of reasonable diligence should have discovered, the
 16 injury, whichever occurs first. In no event shall the time
 17 for commencement of a health care lawsuit exceed 3 years
 18 after the date of manifestation of injury unless tolled for
 19 any of the following:

20 (1) Upon proof of fraud;

21 (2) Intentional concealment; or

22 (3) The presence of a foreign body, which has
 23 no therapeutic or diagnostic purpose or effect, in the
 24 person of the injured person.

1 Actions by a minor shall be commenced within 3 years
2 from the date of the alleged manifestation of injury except
3 that actions by a minor under the full age of 6 years shall
4 be commenced within 3 years of manifestation of injury
5 or prior to the minor's 8th birthday, whichever provides
6 a longer period. Such time limitation shall be tolled for
7 minors for any period during which a parent or guardian
8 and a health care provider or health care organization
9 have committed fraud or collusion in the failure to bring
10 an action on behalf of the injured minor.

11 **SEC. 4. COMPENSATING PATIENT INJURY.**

12 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL
13 ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any
14 health care lawsuit, the full amount of a claimant's eco-
15 nomic loss may be fully recovered without limitation.

16 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any
17 health care lawsuit, the amount of noneconomic damages
18 recovered may be as much as \$250,000, regardless of the
19 number of parties against whom the action is brought or
20 the number of separate claims or actions brought with re-
21 spect to the same occurrence.

22 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC
23 DAMAGES.—In any health care lawsuit, an award for fu-
24 ture noneconomic damages shall not be discounted to
25 present value. The jury shall not be informed about the

1 maximum award for noneconomic damages. An award for
 2 noneconomic damages in excess of \$250,000 shall be re-
 3 duced either before the entry of judgment, or by amend-
 4 ment of the judgment after entry of judgment, and such
 5 reduction shall be made before accounting for any other
 6 reduction in damages required by law. If separate awards
 7 are rendered for past and future noneconomic damages
 8 and the combined awards exceed \$250,000, the future
 9 noneconomic damages shall be reduced first.

10 (d) FAIR SHARE RULE.—In any health care lawsuit,
 11 each party shall be liable for that party's several share
 12 of any damages only and not for the share of any other
 13 person. Each party shall be liable only for the amount of
 14 damages allocated to such party in direct proportion to
 15 such party's percentage of responsibility. A separate judg-
 16 ment shall be rendered against each such party for the
 17 amount allocated to such party. For purposes of this sec-
 18 tion, the trier of fact shall determine the proportion of
 19 responsibility of each party for the claimant's harm.

20 **SEC. 5. MAXIMIZING PATIENT RECOVERY.**

21 (a) COURT SUPERVISION OF SHARE OF DAMAGES
 22 ACTUALLY PAID TO CLAIMANTS.—In any health care law-
 23 suit, the court shall supervise the arrangements for pay-
 24 ment of damages to protect against conflicts of interest
 25 that may have the effect of reducing the amount of dam-

1 ages awarded that are actually paid to claimants. In par-
 2 ticular, in any health care lawsuit in which the attorney
 3 for a party claims a financial stake in the outcome by vir-
 4 tue of a contingent fee, the court shall have the power
 5 to restrict the payment of a claimant's damage recovery
 6 to such attorney, and to redirect such damages to the
 7 claimant based upon the interests of justice and principles
 8 of equity. In no event shall the total of all contingent fees
 9 for representing all claimants in a health care lawsuit ex-
 10 ceed the following limits:

11 (1) 40 percent of the first \$50,000 recovered by
 12 the claimant(s).

13 (2) $33\frac{1}{3}$ percent of the next \$50,000 recovered
 14 by the claimant(s).

15 (3) 25 percent of the next \$500,000 recovered
 16 by the claimant(s).

17 (4) 15 percent of any amount by which the re-
 18 covery by the claimant(s) is in excess of \$600,000.

19 (b) APPLICABILITY.—The limitations in subsection
 20 (a) shall apply whether the recovery is by judgment, settle-
 21 ment, mediation, arbitration, or any other form of alter-
 22 native dispute resolution. In a health care lawsuit involv-
 23 ing a minor or incompetent person, a court retains the
 24 authority to authorize or approve a fee that is less than
 25 the maximum permitted under this section.

1 (c) EXPERT WITNESSES.—

2 (1) REQUIREMENT.—No individual shall be
3 qualified to testify as an expert witness concerning
4 issues of negligence in any health care lawsuit
5 against a defendant unless such individual—

6 (A) except as required under paragraph
7 (2), is a health care professional who—

8 (i) is appropriately credentialed or li-
9 censed in 1 or more States to deliver
10 health care services; and

11 (ii) typically treats the diagnosis or
12 condition or provides the type of treatment
13 under review; and

14 (B) can demonstrate by competent evi-
15 dence that, as a result of training, education,
16 knowledge, and experience in the evaluation, di-
17 agnosis, and treatment of the disease or injury
18 which is the subject matter of the lawsuit
19 against the defendant, the individual was sub-
20 stantially familiar with applicable standards of
21 care and practice as they relate to the act or
22 omission which is the subject of the lawsuit on
23 the date of the incident.

24 (2) PHYSICIAN REVIEW.—In a health care law-
25 suit, if the claim of the plaintiff involved treatment

1 that is recommended or provided by a physician
 2 (allopathic or osteopathic), an individual shall not be
 3 qualified to be an expert witness under this sub-
 4 section with respect to issues of negligence con-
 5 cerning such treatment unless such individual is a
 6 physician.

7 (3) SPECIALTIES AND SUBSPECIALTIES.—With
 8 respect to a lawsuit described in paragraph (1), a
 9 court shall not permit an expert in one medical spe-
 10 cialty or subspecialty to testify against a defendant
 11 in another medical specialty or subspecialty unless,
 12 in addition to a showing of substantial familiarity in
 13 accordance with paragraph (1)(B), there is a show-
 14 ing that the standards of care and practice in the
 15 two specialty or subspecialty fields are similar.

16 (4) LIMITATION.—The limitations in this sub-
 17 section shall not apply to expert witnesses testifying
 18 as to the degree or permanency of medical or phys-
 19 ical impairment.

20 **SEC. 6. ADDITIONAL HEALTH BENEFITS.**

21 In any health care lawsuit, any party may introduce
 22 evidence of collateral source benefits. If a party elects to
 23 introduce such evidence, any opposing party may intro-
 24 duce evidence of any amount paid or contributed or rea-
 25 sonably likely to be paid or contributed in the future by

1 or on behalf of the opposing party to secure the right to
2 such collateral source benefits. No provider of collateral
3 source benefits shall recover any amount against the
4 claimant or receive any lien or credit against the claim-
5 ant's recovery or be equitably or legally subrogated to the
6 right of the claimant in a health care lawsuit. This section
7 shall apply to any health care lawsuit that is settled as
8 well as a health care lawsuit that is resolved by a fact
9 finder. This section shall not apply to section 1862(b) (42
10 U.S.C. 1395y(b)) or section 1902(a)(25) (42 U.S.C.
11 1396a(a)(25)) of the Social Security Act.

12 **SEC. 7. PUNITIVE DAMAGES.**

13 (a) IN GENERAL.—Punitive damages may, if other-
14 wise permitted by applicable State or Federal law, be
15 awarded against any person in a health care lawsuit only
16 if it is proven by clear and convincing evidence that such
17 person acted with malicious intent to injure the claimant,
18 or that such person deliberately failed to avoid unneces-
19 sary injury that such person knew the claimant was sub-
20 stantially certain to suffer. In any health care lawsuit
21 where no judgment for compensatory damages is rendered
22 against such person, no punitive damages may be awarded
23 with respect to the claim in such lawsuit. No demand for
24 punitive damages shall be included in a health care lawsuit
25 as initially filed. A court may allow a claimant to file an

1 amended pleading for punitive damages only upon a mo-
2 tion by the claimant and after a finding by the court, upon
3 review of supporting and opposing affidavits or after a
4 hearing, after weighing the evidence, that the claimant has
5 established by a substantial probability that the claimant
6 will prevail on the claim for punitive damages. At the re-
7 quest of any party in a health care lawsuit, the trier of
8 fact shall consider in a separate proceeding—

9 (1) whether punitive damages are to be award-
10 ed and the amount of such award; and

11 (2) the amount of punitive damages following a
12 determination of punitive liability.

13 If a separate proceeding is requested, evidence relevant
14 only to the claim for punitive damages, as determined by
15 applicable State law, shall be inadmissible in any pro-
16 ceeding to determine whether compensatory damages are
17 to be awarded.

18 (b) DETERMINING AMOUNT OF PUNITIVE DAM-
19 AGES.—

20 (1) FACTORS CONSIDERED.—In determining
21 the amount of punitive damages, if awarded, in a
22 health care lawsuit, the trier of fact shall consider
23 only the following:

24 (A) the severity of the harm caused by the
25 conduct of such party;

1 (B) the duration of the conduct or any
2 concealment of it by such party;

3 (C) the profitability of the conduct to such
4 party;

5 (D) the number of products sold or med-
6 ical procedures rendered for compensation, as
7 the case may be, by such party, of the kind
8 causing the harm complained of by the claim-
9 ant;

10 (E) any criminal penalties imposed on such
11 party, as a result of the conduct complained of
12 by the claimant; and

13 (F) the amount of any civil fines assessed
14 against such party as a result of the conduct
15 complained of by the claimant.

16 (2) MAXIMUM AWARD.—The amount of punitive
17 damages, if awarded, in a health care lawsuit may
18 be as much as \$250,000 or as much as two times
19 the amount of economic damages awarded, which-
20 ever is greater. The jury shall not be informed of
21 this limitation.

22 (c) NO CIVIL MONETARY PENALTIES FOR PRODUCTS
23 IN COMPLIANCE WITH FDA STANDARDS.—

24 (1) PUNITIVE DAMAGES.—

1 (A) IN GENERAL.—In addition to the re-
2 quirements of subsection (a), punitive damages
3 may not be awarded against the manufacturer
4 or distributor of a medical product, or a sup-
5 plier of any component or raw material of such
6 medical product, on the basis that the harm to
7 the claimant was caused by the lack of safety
8 or effectiveness of the particular medical prod-
9 uct involved, unless the claimant demonstrates
10 by clear and convincing evidence that—

11 (i) the manufacturer or distributor of
12 the particular medical product, or supplier
13 of any component or raw material of such
14 medical product, failed to comply with a
15 specific requirement of the Federal Food,
16 Drug, and Cosmetic Act or the regulations
17 promulgated thereunder; and

18 (ii) the harm attributed to the par-
19 ticular medical product resulted from such
20 failure to comply with such specific statu-
21 tory requirement or regulation.

22 (B) RULE OF CONSTRUCTION.—Subpara-
23 graph (A) may not be construed as establishing
24 the obligation of the Food and Drug Adminis-
25 tration to demonstrate affirmatively that a

1 manufacturer, distributor, or supplier referred
 2 to in such subparagraph meets any of the con-
 3 ditions described in such subparagraph.

4 (2) LIABILITY OF HEALTH CARE PROVIDERS.—

5 A health care provider who prescribes a medical
 6 product approved or cleared by the Food and Drug
 7 Administration shall not be named as a party to a
 8 product liability lawsuit involving such product and
 9 shall not be liable to a claimant in a class action
 10 lawsuit against the manufacturer, distributor, or
 11 seller of such product.

12 **SEC. 8. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
 13 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
 14 **SUITS.**

15 (a) IN GENERAL.—In any health care lawsuit, if an
 16 award of future damages, without reduction to present
 17 value, equaling or exceeding \$50,000 is made against a
 18 party with sufficient insurance or other assets to fund a
 19 periodic payment of such a judgment, the court shall, at
 20 the request of any party, enter a judgment ordering that
 21 the future damages be paid by periodic payments in ac-
 22 cordance with the Uniform Periodic Payment of Judg-
 23 ments Act promulgated by the National Conference of
 24 Commissioners on Uniform State Laws.

1 (b) APPLICABILITY.—This section applies to all ac-
 2 tions which have not been first set for trial or retrial be-
 3 fore the effective date of this Act.

4 **SEC. 9. DEFINITIONS.**

5 In this Act:

6 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-
 7 TEM; ADR.—The term “alternative dispute resolution
 8 system” or “ADR” means a system that provides
 9 for the resolution of health care lawsuits in a man-
 10 ner other than through a civil action brought in a
 11 State or Federal court.

12 (2) CLAIMANT.—The term “claimant” means
 13 any person who brings a health care lawsuit, includ-
 14 ing a person who asserts or claims a right to legal
 15 or equitable contribution, indemnity or subrogation,
 16 arising out of a health care liability claim or action,
 17 and any person on whose behalf such a claim is as-
 18 serted or such an action is brought, whether de-
 19 ceased, incompetent, or a minor.

20 (3) COLLATERAL SOURCE BENEFITS.—The
 21 term “collateral source benefits” means any amount
 22 paid or reasonably likely to be paid in the future to
 23 or on behalf of the claimant, or any service, product
 24 or other benefit provided or reasonably likely to be
 25 provided in the future to or on behalf of the claim-

ant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers' compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term “compensatory damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, in-

1 convenience, physical impairment, mental anguish,
 2 disfigurement, loss of enjoyment of life, loss of soci-
 3 ety and companionship, loss of consortium (other
 4 than loss of domestic service), hedonic damages, in-
 5 jury to reputation, and all other nonpecuniary losses
 6 of any kind or nature. The term “compensatory
 7 damages” includes economic damages and non-
 8 economic damages, as such terms are defined in this
 9 section.

10 (5) CONTINGENT FEE.—The term “contingent
 11 fee” includes all compensation to any person or per-
 12 sons which is payable only if a recovery is effected
 13 on behalf of one or more claimants.

14 (6) ECONOMIC DAMAGES.—The term “economic
 15 damages” means objectively verifiable monetary
 16 losses incurred as a result of the provision of, use
 17 of, or payment for (or failure to provide, use, or pay
 18 for) health care services or medical products, such as
 19 past and future medical expenses, loss of past and
 20 future earnings, cost of obtaining domestic services,
 21 loss of employment, and loss of business or employ-
 22 ment opportunities.

23 (7) HEALTH CARE LAWSUIT.—The term
 24 “health care lawsuit” means any health care liability
 25 claim concerning the provision of health care goods

1 or services affecting interstate commerce, or any
2 health care liability action concerning the provision
3 of health care goods or services affecting interstate
4 commerce, brought in a State or Federal court or
5 pursuant to an alternative dispute resolution system,
6 against a health care provider, a health care organi-
7 zation, or the manufacturer, distributor, supplier,
8 marketer, promoter, or seller of a medical product,
9 regardless of the theory of liability on which the
10 claim is based, or the number of claimants, plain-
11 tiffs, defendants, or other parties, or the number of
12 claims or causes of action, in which the claimant al-
13 leges a health care liability claim.

14 (8) HEALTH CARE LIABILITY ACTION.—The
15 term “health care liability action” means a civil ac-
16 tion brought in a State or Federal Court or pursu-
17 ant to an alternative dispute resolution system,
18 against a health care provider, a health care organi-
19 zation, or the manufacturer, distributor, supplier,
20 marketer, promoter, or seller of a medical product,
21 regardless of the theory of liability on which the
22 claim is based, or the number of plaintiffs, defend-
23 ants, or other parties, or the number of causes of ac-
24 tion, in which the claimant alleges a health care li-
25 ability claim.

1 (9) HEALTH CARE LIABILITY CLAIM.—The
2 term “health care liability claim” means a demand
3 by any person, whether or not pursuant to ADR,
4 against a health care provider, health care organiza-
5 tion, or the manufacturer, distributor, supplier, mar-
6 keter, promoter, or seller of a medical product, in-
7 cluding, but not limited to, third-party claims, cross-
8 claims, counter-claims, or contribution claims, which
9 are based upon the provision of, use of, or payment
10 for (or the failure to provide, use, or pay for) health
11 care services or medical products, regardless of the
12 theory of liability on which the claim is based, or the
13 number of plaintiffs, defendants, or other parties, or
14 the number of causes of action.

15 (10) HEALTH CARE ORGANIZATION.—The term
16 “health care organization” means any person or en-
17 tity which is obligated to provide or pay for health
18 benefits under any health plan, including any person
19 or entity acting under a contract or arrangement
20 with a health care organization to provide or admin-
21 ister any health benefit.

22 (11) HEALTH CARE PROVIDER.—The term
23 “health care provider” means any person or entity
24 required by State or Federal laws or regulations to
25 be licensed, registered, or certified to provide health

1 care services, and being either so licensed, reg-
2 istered, or certified, or exempted from such require-
3 ment by other statute or regulation.

4 (12) HEALTH CARE GOODS OR SERVICES.—The
5 term “health care goods or services” means any
6 goods or services provided by a health care organiza-
7 tion, provider, or by any individual working under
8 the supervision of a health care provider, that relates
9 to the diagnosis, prevention, or treatment of any
10 human disease or impairment, or the assessment of
11 the health of human beings.

12 (13) MALICIOUS INTENT TO INJURE.—The
13 term “malicious intent to injure” means inten-
14 tionally causing or attempting to cause physical in-
15 jury other than providing health care goods or serv-
16 ices.

17 (14) MEDICAL PRODUCT.—The term “medical
18 product” means a drug or device intended for hu-
19 mans, and the terms “drug” and “device” have the
20 meanings given such terms in sections 201(g)(1) and
21 201(h) of the Federal Food, Drug and Cosmetic Act
22 (21 U.S.C. 321), respectively, including any compo-
23 nent or raw material used therein, but excluding
24 health care services.

1 (15) NONECONOMIC DAMAGES.—The term
2 “noneconomic damages” means damages for phys-
3 ical and emotional pain, suffering, inconvenience,
4 physical impairment, mental anguish, disfigurement,
5 loss of enjoyment of life, loss of society and compan-
6 ionship, loss of consortium (other than loss of do-
7 mestic service), hedonic damages, injury to reputa-
8 tion, and all other nonpecuniary losses of any kind
9 or nature.

10 (16) PUNITIVE DAMAGES.—The term “punitive
11 damages” means damages awarded, for the purpose
12 of punishment or deterrence, and not solely for com-
13 pensatory purposes, against a health care provider,
14 health care organization, or a manufacturer, dis-
15 tributor, or supplier of a medical product. Punitive
16 damages are neither economic nor noneconomic
17 damages.

18 (17) RECOVERY.—The term “recovery” means
19 the net sum recovered after deducting any disburse-
20 ments or costs incurred in connection with prosecu-
21 tion or settlement of the claim, including all costs
22 paid or advanced by any person. Costs of health care
23 incurred by the plaintiff and the attorneys’ office
24 overhead costs or charges for legal services are not
25 deductible disbursements or costs for such purpose.

1 (18) STATE.—The term “State” means each of
 2 the several States, the District of Columbia, the
 3 Commonwealth of Puerto Rico, the Virgin Islands,
 4 Guam, American Samoa, the Northern Mariana Is-
 5 lands, the Trust Territory of the Pacific Islands, and
 6 any other territory or possession of the United
 7 States, or any political subdivision thereof.

8 **SEC. 10. EFFECT ON OTHER LAWS.**

9 (a) VACCINE INJURY.—

10 (1) To the extent that title XXI of the Public
 11 Health Service Act establishes a Federal rule of law
 12 applicable to a civil action brought for a vaccine-re-
 13 lated injury or death—

14 (A) this Act does not affect the application
 15 of the rule of law to such an action; and

16 (B) any rule of law prescribed by this Act
 17 in conflict with a rule of law of such title XXI
 18 shall not apply to such action.

19 (2) If there is an aspect of a civil action
 20 brought for a vaccine-related injury or death to
 21 which a Federal rule of law under title XXI of the
 22 Public Health Service Act does not apply, then this
 23 Act or otherwise applicable law (as determined
 24 under this Act) will apply to such aspect of such ac-
 25 tion.

1 (b) OTHER FEDERAL LAW.—Except as provided in
 2 this section, nothing in this Act shall be deemed to affect
 3 any defense available to a defendant in a health care law-
 4 suit or action under any other provision of Federal law.

5 **SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES’**
 6 **RIGHTS.**

7 (a) HEALTH CARE LAWSUITS.—The provisions gov-
 8 erning health care lawsuits set forth in this Act preempt,
 9 subject to subsections (b) and (c), State law to the extent
 10 that State law prevents the application of any provisions
 11 of law established by or under this Act. The provisions
 12 governing health care lawsuits set forth in this Act super-
 13 sede chapter 171 of title 28, United States Code, to the
 14 extent that such chapter—

15 (1) provides for a greater amount of damages
 16 or contingent fees, a longer period in which a health
 17 care lawsuit may be commenced, or a reduced appli-
 18 cability or scope of periodic payment of future dam-
 19 ages, than provided in this Act; or

20 (2) prohibits the introduction of evidence re-
 21 garding collateral source benefits, or mandates or
 22 permits subrogation or a lien on collateral source
 23 benefits.

24 (b) PROTECTION OF STATES’ RIGHTS.—Any issue
 25 that is not governed by any provision of law established

1 by or under this Act (including State standards of neg-
 2 ligence) shall be governed by otherwise applicable State
 3 or Federal law. This Act does not preempt or supersede
 4 any law that imposes greater protections (such as a short-
 5 er statute of limitations) for health care providers and
 6 health care organizations from liability, loss, or damages
 7 than those provided by this Act.

8 (c) STATE FLEXIBILITY.—No provision of this Act
 9 shall be construed to preempt—

10 (1) any State law (whether effective before, on,
 11 or after the date of the enactment of this Act) that
 12 specifies a particular monetary amount of compen-
 13 satory or punitive damages (or the total amount of
 14 damages) that may be awarded in a health care law-
 15 suit, regardless of whether such monetary amount is
 16 greater or lesser than is provided for under this Act,
 17 notwithstanding section 4(a); or

18 (2) any defense available to a party in a health
 19 care lawsuit under any other provision of State or
 20 Federal law.

21 **SEC. 12. APPLICABILITY; EFFECTIVE DATE.**

22 This Act shall apply to any health care lawsuit
 23 brought in a Federal or State court, or subject to an alter-
 24 native dispute resolution system, that is initiated on or
 25 after the date of the enactment of this Act, except that

1 any health care lawsuit arising from an injury occurring
2 prior to the date of the enactment of this Act shall be
3 governed by the applicable statute of limitations provisions
4 in effect at the time the injury occurred.

5 **SEC. 13. SENSE OF CONGRESS.**

6 It is the sense of Congress that a health insurer
7 should be liable for damages for harm caused when it
8 makes a decision as to what care is medically necessary
9 and appropriate.

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To protect patients' access to quality and affordable health care by reducing the effects of excessive liability costs.

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